


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY  D.C.

JUN 15 AM 10:35

COMMODITY FUTURES TRADING )  
COMMISSION, )

Plaintiff, )

v. )

FXTRADE FINANCIAL, LLC, et al., )

Defendants. )

ROBERT R. DI TROLLO  
CLERK, U.S. DIST. CT.  
W.D. OF TN, MEMPHIS

NO. 04-2181 D/An

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**ORDER GRANTING MOTION TO COMPEL DISCOVERY**

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Before the Court is Plaintiff's Motion to Compel Discovery Against Defendants FxTrade Financial, LLC; Jeffrey A. Mischler; Lee N. Romano II; Mary Jo Sibbitt; Gordon J. Vandeveld; and Reverie LLC (collectively "Defendants") filed on May 19, 2005. Defendants failed to file a response to the motion as required by Local Rule 7.2(a)(2). "Failure to timely respond to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion." Local Rule 7.2(a)(2). As such, the Motion is **GRANTED**. All Defendants shall be required to provide the initial disclosures or revised initial disclosures requested in Plaintiff's Motion within 11 days of entry of this Order.

Federal Rule of Civil Procedure 37 provides that the payment of reasonable expenses, including attorney's fees, is an appropriate sanction. *See* Fed. R. Civ. P. 37. In addition, "a court may assess attorneys' fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Dillon*, 986 F.2d at 266. The United States Supreme Court agrees with the *Dillon* court. *See, e.g., Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); *Roadway Express, Inc. v.*

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*Piper*, 447 U.S. 752, 763 (1980) (“Both parties and counsel may be held personally liable for expenses, ‘including attorney’s fees,’ caused by the failure to comply with discovery orders.”).

As such, for good cause shown, Defendants shall also be required to pay the reasonable expenses, including attorney’s fees, Plaintiff incurred in filing the instant Motion. Plaintiff shall file an affidavit listing the fees and expenses related to this Motion within 11 days of entry of this Order. Defendants shall each be liable for paying the fees and expenses, subject to the Court’s approval.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
S. THOMAS ANDERSON  
UNITED STATES MAGISTRATE JUDGE

Date: June 13, 2005



## Notice of Distribution

This notice confirms a copy of the document docketed as number 105 in case 2:04-CV-02181 was distributed by fax, mail, or direct printing on June 15, 2005 to the parties listed.

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